

Boyers Construction Company and Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Case 8-CA-15723-2

19 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN

On 30 March 1983 Administrative Law Judge Irwin H. Socoloff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Boyers Construction Company, Wauseon, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, by failing and refusing to furnish the said labor organization with the information requested in its letters to us of 20 April and 28 May 1982.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, furnish the Union with the information requested in its letters to us dated 20 April and 28 May 1982.

BOYERS CONSTRUCTION COMPANY

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon a charge filed on June 18, 1982, by Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein referred to as the Union, against Boyers Construction Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint dated August 2, 1982, alleging violations by Respondent of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, a trial was held before me in Toledo, Ohio, on January 17, 1983, at which all parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

Upon the entire record in this case, and from my observations of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, maintains its principal office and place of business in Wauseon, Ohio, and is engaged in the construction of commercial buildings. Annually, in the course and conduct of its business operations, Respondent receives goods valued in excess of \$50,000 which are shipped directly from points located outside the State of Ohio. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

For many years, the Union has been the collective-bargaining representative of Respondent's employees engaged in ironwork, and the Union and Respondent have been parties to a number of contracts covering those employees. On April 17, 1981, they signed an agreement accepting the terms of a collective-bargaining contract between the Union and Associated Building Contractors of

Northwestern Ohio, effective from July 1, 1980, until June 30, 1982.

On April 20, 1982, the Union, by letter, asked Respondent, Boyers, to furnish information concerning the relationship, if any, between Boyers and Edifice Construction Management. On May 28, the Union sent a letter to Respondent asking for information about the relationship, if any, between Boyers and Fulco Construction Co., Inc. In each instance, the Union stated that its letter "constitutes a grievance" under the contract and that the request for information was based upon the Union's belief that Respondent was diverting work from Boyers, to the second company, in order to avoid the terms of Boyers' contract with the Union. The letters further stated that the requested information was necessary in order for the Union intelligently to process the grievances.

In the instant case, the General Counsel contends that Respondent violated Section 8(a)(5) of the Act by refusing to supply the requested information. Respondent asserts that it was under no statutory obligation to do so.

B. Facts¹

As noted, Respondent and the Union signed a contract on April 17, 1981. At that time, the president and assistant business agent of the Union, Harvey Takacs, spoke with Respondent's president, Jerry Boyers, concerning a construction project in Archbold, Ohio, sponsored by the La Choy Company. Takacs complained that Edifice Construction Management and Fulco Construction Co., Inc., neither of which was a signatory to a union contract, were on the jobsite and performing work. Boyers agreed to complete the project with employees covered by Respondent's contract with the Union, and to withdraw Edifice and Fulco from the project.

In August 1981, Takacs visited a jobsite on Airport Highway in Toledo, Ohio, where he recognized certain workers as previous employees of Respondent. Thereafter, Takacs spoke to Boyers, who stated that the jobsite work was not being performed by Respondent, but by Boyers' construction management firm, Edifice. The Union then placed an informational picket line at the jobsite to protest the failure of Edifice to maintain area standards. Following that action, the disputed work was completed by Respondent under the terms of the contract.

While inspecting the January 1982 edition of the Dodge Report, a trade publication, Takacs learned that Edifice had placed a bid to be general contractor of a large expansion project for the Excello Corporation's McCord subsidiary in Wauseon, Ohio. The Dodge Report of April 5, 1982, revealed that Edifice had been awarded the contract. In both instances, the trade publication listed an address for Edifice identical to Respondent's address.

In light of the foregoing, Takacs concluded that there was substantial reason to believe that Respondent and Edifice were a "dual shop" operation. On April 20, he

sent a grievance letter to Respondent charging violations of specified articles of the contract by the division of work from Respondent to Edifice. The letter requested that certain information be supplied to the Union in order to assist it in the proper processing of the grievance, as follows:

The position(s) in Respondent held by each officer, shareholder, director or other management representative of Edifice Construction Management (hereinafter referred to as "Management").

The position(s) in Management held by each officer, shareholder, director or other management representative of Respondent.

The name of each person who has a function related to labor relations for the Respondent.

The name of each person who has a function related to labor relations for Management.

The customers of the Respondent who are now, or were, referred customers of Management.

The customers of Management who are now, or were, referred customers of the Respondent.

The services, including clerical, administrative, bookkeeping, managerial, drafting, pattern making, detailing, sketching, or other services which are performed for the Respondent by Management.

The services, including clerical, administrative, bookkeeping, managerial, drafting, pattern making, detailing, sketching, or other services which are performed for Management by the Respondent.

The supervisory functions performed by employees of the Respondent over employees of Management.

The supervisory functions performed by employees of Management over employees of the Respondent.

The insurance or other benefits shared in common by employees of the Respondent and the employees of Management.

The work, if any, being performed by the Respondent on or with Management products.

The work, if any, being performed by Management on or for the Respondent and/or its products.

By letter dated May 3, 1982, and thereafter, Respondent refused to supply the requested information.

During the months of April, May, and June 1982, Takacs visited the McCord jobsite on a number of occasions and noticed that the project blueprints contained the name "Boyers Construction." During a visit to the site on June 7, he observed that structural steel and siding, which was being unloaded on site, bore computer tags showing billings to Respondent.

On May 26, 1982, Takacs learned that Edifice and Fulco had jointly filed a lawsuit against the cement finishers union which was then picketing the McCord jobsite. On May 28, the Union sent a grievance letter to Respondent concerning the latter's relationship to Fulco. This letter mirrored the April 20 letter concerning Edi-

¹ The factfindings contained herein are based on the testimony of the Union's president and assistant business agent, Harvey Takacs, the only witness who testified in this proceeding.

fice, and sought corresponding information. Respondent did not reply. On June 10, the Union began picketing the McCord site.

C. Conclusions

It is well established that a labor organization, acting in its capacity as collective-bargaining representative, is entitled, upon appropriate request, to information from the employer that is needed by such bargaining agent for the proper performance of its duties.² The employer's obligation to supply relevant information is part of its general obligation to bargain in good faith and applies not only during the period of contract negotiations, but also during the term of an agreement.³ In the latter period, the bargaining agent is entitled to information relevant to the performance of its duty to police the administration of an existing agreement as well as its duty to formulate proposals in connection with future contract negotiations.⁴

Generally, any information which is relevant and, therefore, reasonably necessary to the union's discharge of its statutory obligations falls within the sphere of the union's entitlement.⁵ This includes information of "potential value" to the union in assisting it "in its task of deciding whether to institute grievance proceedings or use other policing tools under the existing agreement" and in guiding the union "in contract negotiations themselves."⁶ Certain data, such as wage and related information pertaining to employees in the bargaining unit, is presumptively relevant since such data "concerns the core of the employer-employee relationship."⁷ In addition, if requested information relates to one or more existing contract provision it thus is "information that is demonstrably necessary" to the union "if it is to perform its duty to enforce the agreement and to prepare for possible future negotiations."⁸ Information concerning employers and employees outside the represented bargaining unit may be requested, and must be produced, if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties.⁹

In my view, the Board's decisions in *Doubarn Sheet Metal*¹⁰ and *Leonard B. Hebert, Jr., & Co.*¹¹ are dispositive of the instant matter. In those cases, the Board concluded that a bargaining representative, in receipt of information leading it to entertain bona fide questions as to whether the employer is circumventing contractual requirements by its operation of a second enterprise, is entitled, upon request, to information concerning the relationship between the employer and the other enterprise. Such information must be produced if it could make tenable the union's contentions as to contract violations by the employer. Thus, the union need not demonstrate actual instances of contractual violations before the em-

ployer must supply information. Nor must the bargaining agent show that the information which triggered its request is accurate, nonhearsay, or even ultimately reliable. Rather, the union need make only an initial showing that the information sought is relevant and necessary for the evaluation and pursuit of its grievance.

In this case, the Union received information from Respondent's president, and from occurrences at three different construction project sites, reasonably leading it to believe that Respondent, through the Edifice and Fulco entities, might be conducting double-breasted operations for the purpose of circumventing contractual requirements. On that basis, the Union sought information from Respondent concerning its relationship to those entities. The Union's letters requesting information set forth the specific articles of the contract which it believed Respondent had violated, including wage rates, working hours, overtime, holidays, union security, and benefit fund payments. Each letter specifically stated that the letter itself constituted a contractual grievance and that the requested information was needed in order for the Union to determine whether or not to proceed with the grievance.

As the Union had reasonable grounds to believe that a diversion of bargaining unit work to nonunion enterprises might have occurred, its requests for information concerning Respondent's relationships with Edifice and Fulco met the tests of necessity and relevance. By refusing to supply the requested information, Respondent violated Section 8(a)(5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent Boyers Construction Company is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen, apprentices, and foremen of Boyers Construction Company engaged in ironwork, as defined by the charter grant issued by the American Federation

² *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

³ *Id.*

⁴ *Western Massachusetts Electric Co.*, 234 NLRB 118 (1978).

⁵ *Vertol Division*, 182 NLRB 421 (1970).

⁶ *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965).

⁷ *Id.*

⁸ *A. S. Abell Co.*, 230 NLRB 1112 (1977).

⁹ *Associated General Contractors*, 242 NLRB 891 (1979).

¹⁰ 243 NLRB 821 (1979).

¹¹ 259 NLRB 881 (1981).

of Labor to the International Association of Bridge, Structural and Ornamental Iron Workers subject to trade agreements and final decisions of the AFL-CIO, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Union has been, and is now, the exclusive representative of all employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to provide the Union with the information it requested in its letters to Respondent of April 20 and May 28, 1982, Respondent has engaged in, and is engaging in, unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹²

The Respondent, Boyers Construction Company, Wauseon, Ohio, its officers, agents, successors, and assigns, shall:

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Refusing to bargain collectively with Iron Workers Local 55 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, by refusing to furnish it with the information requested by it in its letters to Respondent of April 20 and May 28, 1982.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union by furnishing it with the information requested by it in its letters of April 20 and May 28, 1982.

(b) Post at its facility in Wauseon, Ohio, copies of the attached notice marked "Appendix."¹³ Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."